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Information Bulletin

Retail Sales Tax Branch

Number 1-94

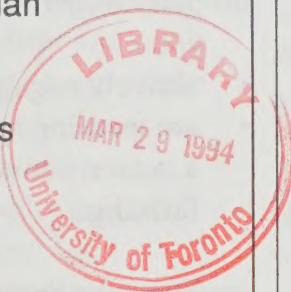
February 1994

Bill 30, "An Act to Amend the Retail Sales Tax Act" contained the changes introduced in the 1993 Ontario Budget on June 1, 1993. Information Bulletin 1-93 (revised), summarized the changes and was sent to all vendors. Copies of Information Bulletin 1-93 (revised) are still available.

After discussions with those affected by these changes, this bill was reintroduced for first reading on December 14, 1993 as Bill 138. This bulletin gives additional details as a result of these discussions.

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The Ontario employer may forward both the premiums and the RST collected from its employees directly to the insurance carrier who will remit the tax.

Status Indians

Status Indians, Indian bands and band councils are not charged RST on insurance premiums they pay on real or personal property situated on a reserve. If the property is a motor vehicle, it **must** be registered to a reserve address.

If a status Indian resident on a reserve works for an employer situated off-reserve, both the status Indian's and the employer's premium payments for group insurance are exempt from RST. Also, RST is not charged on amounts paid into a benefits plan, either by or for a status Indian resident on a reserve.

Unfunded Benefits Plan

Amounts paid by a planholder of an unfunded plan will not be taxable if the amount paid is considered "Total Ontario Remuneration" subject to Employer Health Tax (EHT), under the EHT Act. Amounts paid from an unfunded plan that are included in Ontario income of the employee but not subject to EHT, will be subject to RST.

This change ensures that unfunded benefits plans do not have an unfair tax advantage over funded benefits or insured plans.

INSURANCE

Employers

Many employers who have master policies for group insurance may already be registered with the Retail Sales Tax Branch under the Retail Sales Tax Act. As registered vendors, they must collect any retail sales tax (RST) charged on employee group insurance premiums and pay this tax directly to the Ministry of Finance with any other RST they owe.

If an **Ontario employer** is **not** registered with the Branch for any other purpose under the Act and **the insurance carrier is a registered vendor in Ontario**, the employer is **not** required to register as a vendor for purposes of remitting the RST collected on employee group insurance premiums.

Refunds

Reduced or Cancelled Premiums

If insurance premiums that were previously taxed are reduced or cancelled, vendors may also refund to the taxpayer the RST on the reduced or cancelled amount.

Policy Dividend or Experience Rating Refunds

If a policy dividend or experience rating refund is paid to an individual policyholder, a refund of RST will be allowed *if the account holding these monies was generated from premiums that were previously taxed.*

For policy dividends and experience rating refunds that are kept on deposit by the insurer (an unrestricted demand deposit account which is held outside the insurance contract), an RST refund will not be allowed until such time as the amount is actually paid to the policyholder. If the refund is used to reduce the taxable premium of the policyholder on renewal, it will not be necessary to show a credit of RST on the customer's billing since the RST on renewal will only be paid on the net amount after applying the dividend or experience rating refund.

If the policy dividend or experience rating refund is paid to a group policy owner, the same rules apply. If the refund is subsequently shared with members of the plan, the employer will either pay a premium refund directly to a member (plus RST) or deduct the refund from future premiums and calculate RST on the net amount after the deduction.

If an Ontario resident has paid an annual premium and moves to another province, RST would not be refunded unless the policy is cancelled and a premium is refunded.

Time Limits

RST refunds by insurers to policyholders must be made within four years from the due date of the premium on which the tax was collected.

Single premium insurance may provide coverage for a period of more than four years. A refund of RST on this insurance will not be allowed if the premium refund is made more than four years from the due date of the premium on which the tax was collected.

Insurers have four years from the date they refund any RST to deduct this tax from their subsequent remittances.

Farmers

Starting May 20, 1993, RST does not apply to premiums for insurance on agricultural property. Agricultural property includes farm buildings, structures, equipment and livestock, as well as farm habitats, recreational equipment normally located on the farm and household property.

Persons will not be charged RST for agricultural property *only* if they are:

- actively engaged in the business of farming, or
- are insuring agricultural property that is leased to a person actively engaged in the business of farming.

Insurance on property that is not normally located on a farm is subject to RST (e.g. recreational property and equipment not normally located on a farm). Insurance on motor vehicles licensed under the Highway Traffic Act is also subject to RST.

Since the exemption was originally based on the definition of "agricultural property" in the Insurance Act, initial rulings did not require the property to be owned by or leased to a person actively engaged in the business of farming, only that the property be "agricultural property".

Insurance contracts entered into on or before December 14, 1993 and based on these rulings may continue to be made without paying RST for this premium year. After December 14, 1993, however, if the property is owned by or leased to a person who is not actively engaged in the business of farming, RST must be paid on property insurance even if it is on land zoned for agricultural purposes.

Premiums for insurance contracts on property not considered to be agricultural property are taxable at 8%. Automobile insurance premiums on motor vehicles that are also licensed under the Highway Traffic Act are taxable at 5%, regardless of where the motor vehicle is normally located.

Multi-Employer Plans

In Information Bulletin 1-93 (revised), payments into funded or unfunded benefits plans by the planholder and members of these plans, are taxable. An example of a funded benefits plan is a multi-employer plan where two or more unrelated employers establish a plan to provide protection against risk to their employees or related individuals under a single funded benefits plan.

Administrators or trustees of these benefits plans, including multi-employer plans, must be registered with the Retail Sales Tax Branch to collect and remit to the Ministry of Finance the tax sent to them by the planholder or the employers.

Under a multi-employer plan, each employer must pay to the administrator or trustee of the plan the RST on their contributions. Each employer will also be required to collect and pay directly to the Ministry the RST on any contributions their employees are required to make. The amount of RST paid to the administrator or trustee by employers will be reduced by the amount of RST sent directly by employers to the Ministry in respect of employee contributions. Self-pay or pay-direct contributors must pay RST on the contributions they make into the trust.

In some cases, the administrator or trustee of one plan may receive contributions from employers where a portion of the contributions will be passed through to other plans under reciprocal agreements. The administrator or trustee receiving the RST on employers' contributions must remit the tax directly to the Ministry and certify to the administrator or trustee receiving the reciprocal contributions that RST on those contributions has been paid.

Since contributions into these plans are subject to RST, no additional RST is paid to an insurance carrier when the administrator or trustee uses the funds to buy insurance for members of the plan. The administrator or trustee is responsible for certifying to the insurance carrier that RST has previously been paid.

WARRANTIES

Starting May 20, 1993, replacement parts and labour, used to repair taxable goods under a service, maintenance, warranty or extended warranty contract, are taxable. RST must be charged when billing for both parts and labour required to do warranty repairs on or after May 20, 1993, including repairs under warranty contracts entered into prior to that date.

A warranty will start when goods are sold at a retail sale. There is no effect on the warranty if a retailer returns goods to a wholesaler or manufacturer before the goods are sold to a retail customer.

As a general guideline, whoever pays for the cost of the repairs done under warranty must pay RST. If the customer pays a portion of the bill, such as the deductible part of the warranty repairs, then the customer must pay the tax on that amount. If the repairer pays for the cost of the warranty repairs and does not bill anyone, then the repairer must pay RST on the cost of parts only.

Some administrative guidelines have been developed to distinguish between returned goods and warranty repairs. If vendors allow customers to return unsatisfactory items shortly after the sale, for a full refund or exchange, the Ministry will allow the vendor to record this as a cancelled sale rather than a taxable warranty repair. The guarantee period should not exceed 90 days after the sale.

Returned goods will be treated as cancelled sales only if a full refund or exchange is given to the customer. If the original goods are repaired and returned to the customer, the transaction is a taxable warranty repair.

Goods originally bought by persons who do not have to pay RST on those goods may be returned for repair or replacement under a warranty or guarantee or an extended warranty contract. The person paying for the cost of the repairs or replacement will not have to pay RST if the buyer of the goods or repairs did not have to pay RST.

Examples include:

- manufacturers
- status Indians, Indian bands or band councils
- diplomats
- persons in the business of farming.

DIRECTORS' LIABILITY

Directors of a corporation that has been assessed under the Retail Sales Tax Act may be held jointly and severally liable, together with the corporation, to pay the amount due under the assessment.

Starting on the date Bill 138 receives Royal Assent, liability action against one or more directors of a corporation indebted to Ontario may not be delayed as the result of the corporation filing a proposal under the Bankruptcy and Insolvency Act (Canada).

COMPUTER SOFTWARE

Sales of software by producers directly to users under a negotiated and signed licence arrangement between them are considered to be sales of non-taxable services.

A producer will sometimes arrange to sell its product through a distributor, usually a subsidiary company located in Ontario, under a distributorship agreement. In most cases, the parent company is a non-resident of Ontario.

Since the user is buying the software from a distributor (the subsidiary) rather than dealing directly with the producer (the parent), the distributor is considered to be a retailer of taxable goods. The sale of software under this arrangement is taxable, regardless of any licensing arrangement with the user of the software.

This policy reflects the retail sales tax legislation's intent to tax software sold as tangible personal property while recognizing that contracting for the services of a programmer to write software remains a non-taxable service.

For more information call the Ministry's multilingual public enquiry centre at:

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| All areas | 1-800-263-7965 |
| French language enquiries | 1-800-668-5821 |
| Telecommunication device for the deaf (TDD) | 1-800-263-7776 |

Pour obtenir cette publication en français, veuillez communiquer avec votre bureau local de la taxe de vente au détail.